

OCT 01 2007

Civil Action No. _____

1

3. Removal is proper because plaintiff's suit involves a federal question. 28 U.S.C. §§1331, 1441(b); *Smith v. Amedisys Inc.*, 298 F.3d 434 (5th Cir. 2002); *Medina v. Ramsey Steel Company*, 238 F.3d 674 (5th Cir. 2001). Plaintiff identifies Title 29 Chapter 8 of the Fair Labor Standards Act in paragraph 7 of the original petition. See Exhibit 1. The Plaintiff's original petition also includes a cause of action based on common-law breach of contract. This claim is removable in conjunction with the federal question claims under 28 U.S.C. §1441(c).

4. 28 U.S.C. §1441(a) provides that removal is proper if the federal district court would have had original jurisdiction over the claim. Jurisdiction over fair labor standards claim is conferred on the federal district court by 29 U.S.C. § 203 *et. seq.* Venue is proper in the Southern District of Texas under 28 U.S.C. §1441(a) because all acts forming the basis of this lawsuit occurred therein, and because Defendant's principal place of business is located in Houston, Texas.

5. Defendant will promptly file a copy of this notice of removal with the clerk of the state court where the action has been pending.

6. Accordingly, Defendant Metropolitan Transit Authority hereby notifies this Court of its removal of Plaintiff's lawsuit to federal court based on federal question jurisdiction pursuant to 28 U.S.C. §1441(b).

Respectfully submitted,



Hao Le

Southern District Admission No. 31134

Texas State Bar No. 00796937

P. O. Box 61429

Houston, Texas 77208-1429

(713) 652-7951

(713) 739-4699 FAX


OF COUNSEL:

Metropolitan Transit Authority of Harris County
1900 Main Street
Houston, Texas 77208

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument has been served by ECF or U.S. Mail, Certified, Return Receipt Requested on this the 1st day of October, 2007 to:

Herschel P. Cashin
3730 Kirby Drive, Suite 108
Houston, Texas 77098

A handwritten signature in black ink, appearing to be 'Hao Le', written over a horizontal line.

Hao Le

EXHIBIT 1

CAUSE NUMBER 200748595
 CAUSE NUMBER 200748595
 CAUSE NUMBER 200748595

PLAINTIFF: SHANKS, MICHAEL
 vs.
 DEFENDANT: METROPOLITAN TRANSIT AUTHORITY

In The 125th
 Judicial District Court of
 Harris County, Texas

CITATION CORPORATE

THE STATE OF TEXAS
 County of Harris

RECEIVED

SEP 04 2007

LEGAL DEPT.
 METROPOLITAN TRANSIT AUTHORITY

TO: METROPOLITAN TRANSIT AUTHORITY BY SERVING ITS REGISTERED AGENT
 PRESIDENT AND CEO FRANK WILSON
 1900 MAIN STREET HOUSTON TX 77002

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION

This instrument was filed on the 13th day of August, 2007, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED; you may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

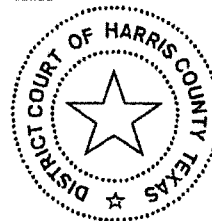
This Citation was issued under my hand and seal of said Court, at Houston, Texas, this 21st day of August, 2007.

Charles Bacarisse

CHARLES BACARISSE, District Clerk
 Harris County, Texas
 201 Caroline, Houston, Texas 77002
 P.O. Box 4651, Houston, Texas 77210

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Issued at request of:
 CASHIN, HERSCHEL P.
 3730 KIRBY DR #1208
 HOUSTON, TX 77098
 Tel: (713) 831-6834
 Bar Number: 3966650



OFFICER/AUTHORIZED PERSON RETURN

I received this citation on the _____ day of _____, 20____, at _____ o'clock ____ M., endorsed the date of delivery thereon, and executed it at _____,

(street address)

(city)

in _____ County, Texas on the 4th day of September, 2007, at 3:40 o'clock P. M., by delivering to _____,

(the defendant corporation named in citation)

_____, in person, whose name is _____, (registered agent, president, or vice-president)

a true copy of this citation, with a copy of the _____ Petition attached, (description of petition, e.g., "Plaintiff's Original")

and with accompanying copies of _____ (additional documents, if any, delivered with the petition)

I certify that the facts stated in this return are true by my signature below on the 4th day of September, 2007.

FEE: \$ _____

By: _____ (signature of officer)

Printed Name: _____

As Deputy for: _____ (printed name & title of sheriff or constable)

Paul Robison
 Affiant Other Than Officer

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, 20____

Notary Public



EXHIBIT 2

2007-48595

MICHAEL SHANKS

V

METROPOLITAN TRANSIT AUTHORITY

§
§
§
§

IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

125 JUDICIAL DISTRICT

DEPUTY

2007 OCT 13 PM 4:11

FILED
CLERK OF DISTRICT COURT
HARRIS COUNTY, TEXAS

ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW MICHAEL SHANKS, Petitioner in the above styled and numbered cause and files this suit against the Metropolitan Transit Authority, herein after referred to as Defendant, and for cause will show this Honorable court the following;

I.

DISCOVERY CONTROL PLAN LEVEL

Plaintiff affirmatively pleads that he seeks monetary relief of more than \$100,000.00, excluding costs, prejudgment interest and attorney fees, and intends that discovery be conducted under Discovery Level 2.

II.

PARTIES AND SERVICE

Plaintiff, Michael Shanks, is an individual residing at 2670 Grand Canyon Street in Houston, Harris County Texas 77067. Defendant, Metropolitan Transit Authority also referred to as METRO, authorized to do business in the state of Texas, whose address is 1900 Main Street in Houston, Harris County, Texas 77002. Defendant may be served with process upon its registered agent for service, President and CEO Frank Wilson whose address is 1900 Main Street in Houston, Harris County Texas 77002.

III.

JURISDICTION AND VENUE

The subject matter of this controversy is within the jurisdictional limits of this court.

This court has jurisdiction over the parties because Defendant is doing business in Texas and this cause of action arose in Houston, Harris County, Texas.

Venue in Harris County is proper in this cause, because this is where the Plaintiff resides and this is where the cause of action arose.

VI.

CONDITIONS PRECEDENT

Petitioner will show that he has complied with all conditions precedent required prior to filing this law suit. He has exhausted all of the administrative remedies that are available through his employer Metro. He sent them a demand letter on July 14, 2006. Finally, he filed an EEOC claim against Metro and received his right to sue letter in May of 2007.

VII.

FACTS

In June of 1995, Plaintiff began working for Defendant as a Mini Bus operator. At the time, he was promised that after 1 year of employment, he would receive promotions as long as he remained an employee of good standing. At that time his salary was \$7.54 per hour.

In 1996, he should have been promoted as promised to a salary of \$14.80 per hour. However his salary remained at \$7.54 per hour until 1999.

In 1999, a Tier I and Tier II pay schedule was implemented. Plaintiff should have been, at that time, a Tier I employee making \$17.25 per hour. However, he was classified as a Tier II employee making only \$15.10 per hour.

From 2004 through 2005 Plaintiff was still classified as a Tier II employee making \$15.77 per hour instead of \$17.77 per hour as we contend he should been making.

From 2005 through 2006 he should have been making \$17.95 per hour instead of the \$15.99 he has been making.

Petitioner will show that he has been underpaid in regards to vacation pay.

Petitioner will show that he has not been properly compensated for the overtime pay that he is entitled to. Specifically, he should have been paid \$14.80 per hour instead of the \$7.54 per hour that he has been paid in overtime from 1996 through 2003.

V.

Petitioner will show that Defendant has continuously maintained a suppressive work environment in terms of his denial of the promotions that he has been entitled to. As well as intentionally denying him the pay that he is entitled to.

VI.

PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT

Plaintiff will show that Defendant has continuously violated the labor agreement with the union in respect to their treatment of Petitioner in regards to the payment of overtime as well as in regards to the promotion of Petitioner.

VII.

VIOLATION OF FAIR LABOR STANDARDS ACT

Petitioner will show that Defendant's actions are presently and have been in violation of Title 29 Chapter 8 of the Fair Labor Standards Act. Defendant's actions and course of conduct have shown a continuous and willful pattern of violations. Defendant has violated the Fair Labor Standards Act in regards to Petitioner's vacation, holiday, severance and sick pay, and continues to violate Petitioner's rights.

VIII.

DAMAGES

Petitioner requests that he be able to collect all unpaid wages including but not limited to unpaid overtime compensation for the past years, vacation pay, holiday, severance pay, and any and all other damages in law or equity as he may show himself entitled to. In addition, Petitioner seeks the promotion that he has been entitled to, and the payment of wages lost associated thereto and an additional equal amount as liquidated damages.

IX.

ATTORNEY'S FEES, AND COST

Petitioner prays that he be able to recover all attorney fees that he has incurred in the prosecution of this matter. In addition, Petitioner prays that he recover his cost of court, including prejudgment and post judgment interest that may be incurred in the appeal of this matter.

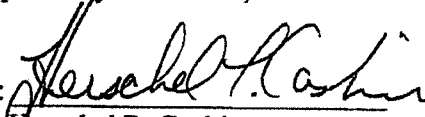
X.

PRAYER

WHEREFORE PREMISES CONSIDERED , Plaintiff respectfully prays that THE Defendant be sited to appear and answer herein, and that upon a final hearing of this cause, judgment be entered for Plaintiff against Defendant for damages in the amount within the jurisdiction of this court; together with pre-judgment interest from the date of injury through the date of judgment at the maximum rate allowed by law; post-judgment interest at the legal rate, cost of court; and such other and further relief to which Plaintiff may show he may be entitled at law or in equity.

Respectfully submitted,

By:


Herschel P. Cashin
Texas Bar No. 03966650
3730 Kirby Dr. Suite 108
Houston, Texas 77098
713-831-6834
Fax 713-831-6851
Attorney for Michael Shanks